



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	HB0678	Title:	Revise opencut mining laws
Primary Sponsor:	Pomnichowski, JP	Status:	As Introduced

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
DEQ State Special Revenue	\$297,442	\$290,958	\$297,513	\$310,116
Revenue:				
General Fund	\$0	\$0	\$0	\$0
DEQ State Special Revenue	\$795,450	\$397,725	\$397,725	\$397,725
Natural Resources Projects	\$35,187	\$93	\$93	\$93
Environmental Quality Protection	\$17,593	\$47	\$47	\$47
Hazardous Waste / CERCLA	\$17,593	\$47	\$47	\$47
Net Impact-General Fund Balance	\$0	\$0	\$0	\$0

Description of fiscal impact:

This bill requires the Department of Environmental Quality (DEQ) to review and notify an operator within 10 business days of receipt of an opencut mine permit, and provide public notice and hold a public meeting in response to sufficient requests from adjacent surface owners as a result of public notice of the proposed operation by the applicant. These additional procedures would require the equivalent of 4.00 FTE and contracted services. The bill would also require that all opencut operators, except those producing bentonite, submit a yearly fee to the DEQ.

FISCAL ANALYSIS

Assumptions:

1. This bill would require that, within 10 business days of receiving an opencut mine permit application, DEQ would need to review the application for administrative completeness and notify the applicant whether the application was complete, and if not, identify all deficiencies. The 10 day review and

notification time limit would apply to all subsequent responses to deficiencies until the application is deemed complete.

2. This bill would add requirements for an applicant of a new permit or specified types of amendments to publish a public notice of the proposed operation in a newspaper in the locality of the proposed operation and to mail notices to surface owners within one-half mile of the proposed operation, after the DEQ determines the application to be complete. Within a prescribed time limit, if the applicant requests the DEQ to hold a public meeting, or if 30% of surface owners make such a request in response to the notices, the DEQ would, after notifying affected parties, be required to hold a public meeting to allow for questions and answers as well as public comments and objections.
3. The public meeting and consideration of public comments would need to be completed within 75 days after the DEQ determines the application is complete, unless “substantial issues” were identified by the DEQ or as a result of the public meeting. In this case, an acceptability review would need to be completed within 60 days of the date the DEQ determines the application requires an extended review. Within these timelines, the DEQ would need to notify the applicant whether the application was acceptable, and if not, identify all deficiencies. A 30 day review and notification time limit would apply to all subsequent responses to deficiencies until the application was deemed acceptable.
4. The bill would require that initially complete and then acceptable applications be posted on the DEQ’s website. In the short-term, this would require electronic scanning of applications, creating a new DEQ webpage, and posting applications on the webpage. In the long-term, the DEQ would develop an electronic data management system (DMS), which would house all application and permit materials. Once developed, this system would be linked to the DEQ website for public access, thereby circumventing the need to separately post all complete and acceptable applications on a webpage.
5. Based on the previous years of permitting activity it is anticipated that the DEQ would process an estimated average of 100 new permit and amendment applications in each fiscal year in the next two biennia and that an estimated average of 35 of these applications would have sufficient public interest and concern resulting in 35 public meetings per fiscal year.

Additional Fee Revenue

6. Along with annual report submittals to DEQ, all opencut mine permittees, except for those producing bentonite, would be required to submit a fee of \$0.025 per cubic yard of product mined during the previous calendar year. The DEQ would deposit 85% of collected fees in an account to be used solely for the purpose of administering the opencut mining program. The remaining 15% would be transferred to the Department of Revenue (DOR) for distribution in accordance with 15-38-106, MCA.
7. The fee would be retroactive to calendar year 2008; thus, after passage of the bill, the DEQ would notify operators of their obligation to submit appropriate fees in a timely manner. It is estimated that this will happen in FY 2010.
8. Production figures from 2007 submitted to DEQ in annual reports (18,716,465 cubic yards for all opencut materials mined by permitted operations, excluding bentonite) was used to estimate the potential revenue generated by annual fees. Of this total, 85% would be deposited into the opencut account and the remaining amount (15%) would be transferred to the DOR. The estimated revenues are shown in the following table.
9. Impact to the Department of Natural Resources and Conservation would exist when they use gravel from state school trust lands. This amount was estimated at less than \$1000 per year and not included in the fiscal impact.

Additional Fee Revenue Estimates				
	FY 2010	FY 2011	FY 2012	FY 2013
Cubic Yards	18,716,465	18,716,465	18,716,465	18,716,465
Fee	\$0.025	\$0.025	\$0.025	\$0.025
Current Year Tax Liability	\$467,912	\$467,912	\$467,912	\$467,912
Percent Collected	100%	100%	100%	100%
Current Year Revenue	\$467,912	\$467,912	\$467,912	\$467,912
Retro Liability	\$467,912	\$0	\$0	\$0
Total Revenue	\$935,823	\$467,912	\$467,912	\$467,912
DEQ Portion (85%)	\$795,450	\$397,725	\$397,725	\$397,725
DOR Portion (15%)	\$140,373	\$70,187	\$70,187	\$70,187

Effect on Resource Indemnity Ground Water Assessment (RIGWA) Distribution

10. In FY 2008, the Department of Revenue reports these operations generated \$70,000 in RIGWA tax revenue that was deposited in a special revenue fund. Under this bill, those revenues would no longer be deposited in the special revenue fund, and thus there will be a \$70,000 deduction in RIGWA revenue.
11. Per 15-38-106 MCA, the balance remaining in the RIGWA after statutory appropriations is transferred to the following funds in these percentages: Environmental Quality Protection Fund (25%), Hazardous Waste/CERCLA (25%) and Natural Resources Projects (50%). The following table shows the net impact to these funds. FY 2010 shows increased revenues due to increased collections due to retroactive language in the bill.

HB 678 Effect on RIGWA Distributions				
	FY 2010	FY 2011	FY 2012	FY 2013
Increase in Revenue Collected by DEQ From HB 678	\$140,373	\$70,187	\$70,187	\$70,187
Decrease in Revenue Collected by DOR From HB 678	(\$70,000)	(\$70,000)	(\$70,000)	(\$70,000)
Net impact	\$70,373	\$187	\$187	\$187
Natural Resources Projects (50%)	\$35,187	\$93	\$93	\$93
Environmental Quality Protection (25%)	\$17,593	\$47	\$47	\$47
Hazardous Waste / CERCLA (25%)	\$17,593	\$47	\$47	\$47

Department of Environmental Quality (DEQ)

12. It is anticipated that two full time environmental specialists, one full time compliance technician, one administrative assistant, contracted services of a court recorder, room and equipment rental, and contracted services for developing and maintaining a data management system (DMS) would be needed to implement this bill. Personal services (salaries and benefits) costs would be: \$168,962 in FY 2010, \$168,962 in FY 2011, \$173,186 in FY 2012, and \$177,516 in FY 2013. Operating expenses would be \$128,480 in FY 2010, \$117,771 in FY 2011, \$119,997 in FY 2012, \$128,162 in FY 2013, which include supplies, travel, communications, education/training, contracts, and indirect costs. The cost of developing and maintaining a DMS is estimated to be \$10,000 per year. There is a 2.5% inflation factor applied to FY 2011-2013; and higher costs exist in the first year for office set up expenses.

13. There would be an average of approximately three meetings per month throughout each year for which the DEQ would be responsible.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
FTE	4.00	4.00	4.00	4.00
<u>Expenditures:</u>				
Personal Services	\$168,962	\$168,962	\$173,186	\$177,516
Operating Expenses	\$128,480	\$117,771	\$119,997	\$128,162
TOTAL Expenditures	<u>\$297,442</u>	<u>\$286,733</u>	<u>\$293,183</u>	<u>\$305,678</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
DEQ State Spec Rev(02)	\$297,442	\$286,733	\$293,183	\$305,678
TOTAL Funding of Exp.	<u>\$297,442</u>	<u>\$286,733</u>	<u>\$293,183</u>	<u>\$305,678</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
DEQ State Spec Rev(02)	\$795,450	\$397,725	\$397,725	\$397,725
Natural Resources Projects (02)	\$35,187	\$93	\$93	\$93
Environmental Quality Protection (02)	\$17,593	\$47	\$47	\$47
Hazardous Waste / CERCLA (02)	\$17,593	\$47	\$47	\$47
TOTAL Revenues	<u>\$865,823</u>	<u>\$397,912</u>	<u>\$397,912</u>	<u>\$397,912</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$0	\$0	\$0	\$0
DEQ State Spec Rev(02)	\$498,008	\$110,992	\$104,542	\$92,047
Natural Resources Projects (02)	\$35,187	\$93	\$93	\$93
Environmental Quality Protection (02)	\$17,593	\$47	\$47	\$47
Hazardous Waste / CERCLA (02)	\$17,593	\$47	\$47	\$47
TOTAL Net Impacts	<u>\$568,381</u>	<u>\$111,179</u>	<u>\$104,729</u>	<u>\$92,234</u>

Effect on County or Other Local Revenues or Expenditures:

1. Counties and towns, as well as private companies, hold opencut mining permits. Local governments would be required to publish and send out public notices for mine permit applications for new sites. The costs and time to counties to comply with this requirement would be quite variable. For proposed local government operations in sparsely populated areas, there may be a small impact to resources. For proposed operations in more highly populated areas, the impact could be considerably larger.

Technical Notes:

1. It would be more efficient if DEQ were to directly deposit the 15% of opencut permit collections directly into the funds instead of transferring the collections to DOR which in turn would deposit the monies back to DEQ in those funds as directed.

Sponsor's Initials

Date

Budget Director's Initials

Date



Dedication of Revenue 2011 Biennium

HB 678

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay?**
The citizens of Montana would benefit by providing the means for public involvement, timely reviews of permit applications, and the assurance that permits issued would comply with applicable regulatory statutes and rules creating a greater degree of environmental protection.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**
Creating a fee system to provide the resources needed to implement this bill and additional support for the needs of the program targets a large portion of the primary users of the program service (opencut mining companies, except for bentonite mine operators), instead of attempting to acquire more funding from the general fund which is subject to many competing needs.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended?**
Yes
- d) **Does the need for this state special revenue provision still exist?**
Yes, the opencut mining program has a serious need for new staff now to make the program more effective and timely in meeting its responsibilities under the law. Beyond this need, additional staff and resources would be needed to implement the additional requirements of this bill.
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending?**
No, it does not change its ability so scrutinize budgets. This state special revenue fund and associated expenditures would be presented in HB 2 in future biennia.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need?**
Yes. This revenue would be used to make the program effective and timely in meeting its responsibilities, as well as providing for the resources needed to implement the new requirements in this bill.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency?**
The Department of Environmental Quality and the Permitting and Compliance Division currently maintain a number of fee programs. However, the creation of an annual fee system would add a new dimension to the opencut mining program's accounting and budgeting activities, because it would involve collecting and managing fees from approximately 1,770 opencut mining operations (based on current figures). This new dimension would require a full-time administrative assistant and compliance technician to administer the fee system and the additional services to be provided by the program. If the program/activity were general-funded in FYs 2010-2013, the DEQ could and would adequately account for the activity.